

**DEPARTMENT OF INSURANCE****Legal Division, Rate Enforcement Bureau**45 Fremont Street, 21st Floor  
San Francisco, CA 94105

September 6, 2001

RH-402

**REQUEST FOR PUBLIC INPUT**

The Insurance Commissioner of the State of California ("Commissioner") hereby invites public input on the limited issue of suggested regulatory language regarding the use of "persistence" as a rating factor in personal automobile insurance.

On June 4, 2001 the Commissioner granted a Petition for Rulemaking of the Foundation for Taxpayer and Consumer Rights, dated May 4, 2001. The petition requested that the Commissioner promulgate regulations addressing the scope of use of persistence as an insurance rating factor.

The Petition for Rulemaking requested that the Commissioner "establish parameters and clarity for 'persistence' as (a) rating factor in light of §1861.02(c)'s prohibition against the use of absence of prior insurance as a rating factor." Therefore the Commissioner hereby requests input on the language of any proposed regulation addressing the use of persistence as a rating factor. Any remarks shall be confined solely to the issue of persistence, as the purpose of this request is to formulate language addressing only the use of "persistence" as a rating factor.

The Commissioner also invites comment on the following potential regulatory language suggested by the Foundation for Consumer and Taxpayer Rights and the Consumers Union of U.S., Inc., in a petition for emergency rulemaking filed on July 18, 2001.

**No insurer may use the absence of prior automobile insurance coverage (including but not limited to the absence of evidence of prior automobile insurance coverage and the absence of verification of any underwriting or rating characteristic by a prior insurance carrier) to determine or vary any rate or premium by surcharge, discount, or otherwise; nor to determine eligibility from a standard to a substandard insurer; nor generally for the insurer's automobile rates, premiums, underwriting criteria, or determination of insurability. This prohibition applies to such use alone and to such use in conjunction with any other rating factor.**

The Commissioner also invites comment upon the following potential regulatory language:

**2632.5(d)(11)**

**Persistence. Persistence may be applied as an optional rating factor by an insurer or affiliate when the insurer or affiliate renews an existing automobile insurance policy for the current named insured. However, no insurer shall apply persistence**

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**as an optional rating factor when it issues a new automobile insurance policy. Nor shall any insurer apply persistency as an optional rating factor based upon automobile insurance coverage provided by a non-affiliated insurer. As used in this section, "affiliate" has the same meaning as defined in California Insurance Code Section 1215.**

Any and all remarks must be received by September 21, 2001, in order to be considered. Remarks and/or questions should be directed to:

Antonio A. Celaya, Staff Counsel  
California Department of Insurance  
45 Fremont Street, San Francisco, CA 94105.

Dated: September 6, 2001

HARRY W. LOW  
Insurance Commissioner

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